WP(C) 8158/2002
BEFORE
HON’BLE MR. JUSTICE HRISHIKESH ROY
Heard Mr. G. Goswami, learned counsel appearing for the petitioner. Ms. M. Gogoi Medhi, learned Standing Counsel, Education, appears for the official respondents.

2. The petitioner was appointed as an Assistant Teacher and was posted at the Dahali Karka M.E. School by appointment order dated 7.12.1993 issued by the District Elementary Education Officer(DEEO), Guwahati. Subsequently, by order dated 5.3.2001 of the DEEO, her service was regularized w.e.f 1.8.2000. Being aggrieved with non-regularization of her service from the date of her initial appointment and non-disbursal of her salary, the petitioner filed WP(C) No. 8158/2002, where she also prayed for a further direction to protect her services. On 7.1.2003 notice of motion was issued and it was ordered by the Court that, the petitioner would be allowed to continue in the post of Asst. Teacher in the Dahali Karka M.E. School and necessary steps should be taken by the respondents for releasing her salary in that capacity w.e.f. 1.8.2000.

3. Since the Court’s order was disregarded, a contempt case i.e. COP' No. 484/2003 was filed alleging willful disobedience of the Court’s interim order of 7.1.2003 in WP' No. 8158/2003. The then Secretary to the Govt. of Assam, Education Department, filed an affidavit in the contempt case, where it was averred that necessary steps are being taken to ensure the continuance of the petitioner in the Dahali Karka M.E. School, by transferring a teacher from the said school to make room for the petitioner. The Secretary, who personally appeared assured the Court that the current salary of the petitioner is being paid and steps have been taken for payment of her arrear salary pending since 1.8.2000. Assuaged by the Secretary’s personal assurance, the contempt proceeding was ordered to be closed by the Court on 16.12.2003.

4. Subsequently, an order was passed on 8.12.2003 by the District Elementary Officer, Kamrup, adjusting the petitioner in the Dahali Karka M.E. School against the transfer vacancy of one Sri Anil Chandra Kumar. But in the adjustment order, certain conditions were recorded, which Mr. Goswami contends to be, contrary to the order passed by this Court on 7.1.2003 in W.P.(C) No. 8158/2002, directing payment of salary from 1.8.2000.

5. Mr. G. Goswami also contends that when the orders passed on 7.1.2003 in WP' No. 8158/2002 and on 6.12.2003 in COP(C) No. 484/2003 attained finality in the absence of any challenge, the respondents cannot refuse petitioner’s salary from 1.8.2000 in terms of the order of regularization dated 5.3.2001. By referring to the averments in misc. case 3684/2007, the counsel points out that although the petitioner is getting her regular salary w.e.f. April, 2004, her arrear salary w.e.f. 1.8.2000 to April, 2004, is yet to be disbursed.

6. Ms. M. Gogoi Medhi, learned Standing Counsel submits that although she had requested for instructions in pursuant to the order passed by this Court on 1.3.2011, instruction has not been furnished to her and accordingly, she is not in a position to say as to why the arrear salary of the petitioner have remained unpaid for the period from 1.8.2000 to March, 2004. But even without instructions, she submits that the Court may consider referring the claim of salary of the petitioner, to the committed constituted under the direction given by this Court in Sudhendu Mohan Talukdar Vs. State of Assam reported in 2006 Vol. 2 GLT 216 . But on this submission, since the Court has already ordered on 1.3.2003 that petitioner’s salary be paid from 1.8.2000, I see no further role of this committee to have a look at the petitioner’s salary claim.

7. Although the appointment of the petitioner is contended to be irregular by the Departmental Counsel, in the absence of any counter affidavit, this Court

is not inclined to proceed with this case on that basis. Furthermore, it also appears that the order passed by this Court on 7.1.2003 was never challenged and in fact an assurance was given on 16.12.2003 by a responsible officer in the contempt case that, steps are being taken for release of the petitioner’s arrear salary since 1.8.2000.

8. Since the respondents have failed to explain why the arrear salary of the petitioner have remained unpaid since 1.8.2000 i.e. the date from which her service was regularized, I am of the view that the direction should be given to the respondents to take all necessary steps to pay the due arrear salary to the petitioner w.e.f. 1.8.2000, in terms of the Court’s order passed on 7.1.2003 and the assurance given on 6.12.2003 in COP' 484/2003, bearing also in mind the order of regularization passed by the DEEO, Guwahati on 5.3.2001. However, the prayer for regularization of service from the date of appointment i.e. 7.12.1993 is found to be unjustified and is rejected. The petitioner be accordingly granted all consequential benefits of a regularized teacher w.e.f 1.8.2000.

9. The respondents are ordered to ensure compliance preferably within a period of three months, from the date of receipt of a copy of the order.

10. The case is disposed of accordingly without any order of cost.